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ABSTRACT

In 1988, there were two United States Supreme Court decisions regarding school finance. One decision upheld the constitutionality of a North Dakota statute regarding transportation fees, and the other decision ruled that interest from state and local government bearer bonds was subject to federal income taxation. Cases discussed in this chapter fall under three major topics: (1) public funds for private schools; (2) sources and allocations of public school funds; and (3) school tax issues. Federal appellate court cases included decisions on issues associated with fund reimbursement, misspent federal funds, allocation of capital expenditures, and the constitutionality of chapter 1 expenditures for mobile classrooms to sectarian schools. State courts litigated cases concerning both substantive and procedural issues related to a state's school finance system, continuance of teacher salary supplements, disputed state aid calculations, school fees, and athletic activity funds. School tax cases dealt with questions associated with assessment, collection, exemptions, uses, elections, and disbursement. (MLF)

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FINANCE

Bettye MacPhail-Wilcox and Bruce Beezer

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INTRODUCTION

In 1988, there were two United States Supreme Court decisions regarding school finance. One decision upheld the constitutionality of a North Dakota statute regarding transportation fees, and the other decision ruled that interest from state and local government bearer bonds was subject to federal income taxation. There were also a number of federal appellate court decisions. These decisions ruled on issues associated with chapter 1 fund reimbursement. Another decision dealt with misspent federal funds in a special education program. Allocation of capital expenditures by local school districts due to a desegregation settlement was determined in another decision. Finally, the constitutionality of chapter I expenditures for mobile classrooms to sectarian schools was decided.

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During this reporting period, state courts litigated cases concerning both substantive and procedural issues related to a state's school finance system, continuance of teacher salary supplements, disputed state aid calculations, school fees, and athletic activity funds. School tax cases dealt with questions associated with assessment, collection, exemptions, uses, elections, and disbursement. Other cases ruled on interdistrict tuition cost and bond referenda. Finally, Massachusetts' highest court determined what were allowable costs incurred by a nonprofit charitable corporation for special education services.

PUBLIC FUNDS FOR PRIVATE SCHOOLS

The Court of Appeals, Eighth Circuit, upheld a lower court ruling that plaintiffs lacked standing as federal and Missouri taxpayers to challenge executive implementation of chapter I funds under the Education Consolidation and Improvement Act of 1981 (Act).[1] The plaintiffs argued the guidelines of the Act violated the establishment clause by authorizing the use of mobile vans or other mobile classrooms to provide chapter I services on sectarian school-owned land. The plaintiffs first argued that their standing to sue as federal taxpayers could be established solely on the allegation that executive implementation of a congressional spending program violates the establishment clause. The court stated that under *Flast v. Cohen*[2] and *Valley Forge Christian College v. Americans United for Separation of Church and State*[3] "federal taxpayers do not have standing to challenge executive action which is 'arguably authorized' by a congressional act, whether that act is passed pursuant to the taxing and spending clause or some other constitutional provision."[4] The plaintiffs' second contention was that they had standing as state taxpayers because they had an interest in the use of local tax revenue. This claim was premised on the belief that the school districts used local funds to maintain the public school program because of the high percentage of federal funds withheld for the services provided the sectarian schools. Evidence showed, however, that Missouri educational agencies were bypassed; therefore, no state or local tax revenues were used to provide the services to the sectarian schools.

The Supreme Judicial Court of Massachusetts reversed and remanded the Rate Setting Commission (RSC) decision to disallow costs for services provided by a third party to a nonprofit, charitable education

1. Pulido v. Bennett, 848 F.2d 880 (8th Cir. 1988). *See* The Yearbook of School Law 1986 at 199.
2. 392 U.S. 83 (1968).
3. 454 U.S. 464 (1982).
4. Pulido v. Bennett, 848 F.2d 880, 885 (8th Cir. 1988).

corporation.[5] The plaintiff, who provides services to special education children, had submitted incurred costs billed by another nonprofit corporation for services. The RSC refused to pay the third party costs because they included a profit—a violation of its policy. The plaintiff argued that state regulations did not disallow a supplier's profits, only that the costs be reasonable when judged by the "prudent buyer concept." The court found the RSC had not performed the prudent buyer concept analysis by comparing the school's costs to those of comparable agencies.

SOURCES AND ALLOCATIONS OF PUBLIC SCHOOL FUNDS

State School Finance Programs

The Supreme Court of South Carolina issued an opinion regarding the constitutionality of the state's public education financing system. West Virginia's highest court ruled, in one opinion, on the constitutionality of a statute mandating salary equity and, in another decision, on reductions in state expenditures for education. The Supreme Court of Louisiana decided the constitutionality of the state's allocation to ensure a minimum foundation program. The Supreme Court of Arizona determined the correct royalty rate to be charged for mineral leases on school trust lands. A California appellate court determined whether the state should reimburse a local education agency for costs incurred when complying with the state's occupational safety and health law. Two decisions by Michigan appellate courts considered issues related to funding and the 180 day school year mandate. The Supreme Court of Alabama determined the constitutionality of the state's 1987 appropriations act. A Florida appellate court ruled on the methodology employed to determine the estimated level of assessment. Finally, the Eighth Circuit Court of Appeals issued an opinion on the amount the state was to reimburse local school districts for costs incurred due to an interdistrict desegregation plan.

Local taxpayers sought a declaratory judgment challenging the constitutionality of South Carolina's public education financing system.[6] They claimed the South Carolina Education Finance Act (EFA) and Education Improvement Act (EIA) required shared funding by the state and local school districts to provide a minimum education program.[7] This allocation of funding, the plaintiffs alleged, produced "disparate revenue and unequal educational opportunities because it was based

5. Little People's School, Inc. v. Rate Setting Comm'n, 525 N.E.2d 416 (Mass. 1988).
6. Richland County v. Campbell, 364 S.E.2d 470 (S.C. 1988).
7. S.C. Code Ann. §§ 59-20-10 *et seq.* (Supp. 1986) and 59-21-20 and 12-35-510 (Law. Co-op. 1976).

upon formulas that take into account the individual wealth of the various school districts."[8] Such an approach denies equal educational opportunity to students in violation of the state constitution.[9]

The Supreme Court of South Carolina affirmed a lower court's ruling for the state on three grounds emphasizing the distinction of the legislature being required "to pay" all costs of a public school system and "to provide" for its maintenance and support. The court first noted that the framers of the constitution "left the legislature free to choose the means of funding the schools . . . to meet modern needs."[10] Therefore, the legislature by enacting the EFA and EIA had chosen a legitimate means to provide education by using a shared funding formula. The court next stated that the statutes were valid because its own precedent stated "it is a cardinal principle that courts will presume the legislative act to be constitutionally valid, and every intendment will be indulged in favor of the act's validity."[11] The third ground used by the court was that the EFA provides for shared funding and allows poor districts to receive proportionally more state funds and to pay less local tax revenues for their public school operations. This compensating formula assures that all children will receive an equal educational opportunity regardless of district wealth.

West Virginia's highest court held that reductions in state expenditures for education for the 1987-88 fiscal year were unconstitutional.[12] The governor and legislature agreed that the reductions violated the constitutional provisions relating to education. However, a shortfall of more than $25 million between the state budget appropriations and estimated revenues required the cuts in order to balance the budget as mandated by another provision in the West Virginia Constitution.[13] The court stated that the balanced budget provision required the enactment of a "proper budget bill." This mandate had not been fulfilled because the constitution and school finance statutes gave public education a preferred constitutional status and the appropriated funds were insufficient to provide a "thorough and efficient school system."[14]

The same court, in another case concerning article 12, section 1 of the state constitution, ruled that a state statute violated equal protection rights.[15] Two county boards of education had petitioned for a writ of

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8. Richland County v. Campbell, 364 S.E.2d 470, 471 (S.C. 1988).
9. S.C. Const. art. XI, § 3.
10. Richland County v. Campbell, 364 S.E.2d 470, 472 (S.C. 1988).
11. *Id.*
12. West Virginia Educ. Ass'n v. Legislature of W. Va., 269 S.E.2d 454 (W. Va. 1988).
13. W. Va. Const. of 1872, art. 6, § 51 (1968).
14. W. Va. Const., art. 12, § 1.
15. State *ex rel.* Board of Educ. for County of Grant v. Manchin, 366 S.E.2d 743 (W. Va. 1988).

mandamus to have a "salary equity" statute declared unconstitutional.[16] The purpose of the statute was to encourage counties not to discontinue salary supplements after January 1, 1984. If they did, they would lose a pro rata equitable distribution of state equity funds. The plaintiffs had county-financed supplements paid from excess levy funds prior to January 1, 1984, but after that date the county voters rejected the excess levy. The State Board of Education subsequently considered the salary loss in its distribution of equity funds. The plaintiffs' contention was that the statute's effect permitted an unequal and discriminatory compensation system that resulted in salary reductions for their school personnel.

The court first noted that article 12, section 3 mandates a thorough and efficient system of free schools, and this mandate makes education a fundamental right. One means to provide all students with such a right is for county boards of education to have financial resources sufficient to employ and retain high quality personnel. This condition is not possible by a statute "which awards state equity funding for salary supplementation purposes in an amount based upon whether or not a particular county had in effect an excess levy to provide additional financing on a particular date."[17] The state also failed to present a compelling state interest to justify the discriminatory effect the statute had on the system of educational financing.

The Louisiana legislature has the authority to appropriate the funding level for public schools, subject only to the constitutional mandate that the funds are adequate to provide a minimum foundation program of education. In January 1986, the department of education sent a budget request to the legislature totalling approximately $976 million to fund the 1986-87 school year. The legislature appropriated some $42 million less than the requested amount. The plaintiffs sued, claiming the legislature had violated the Louisiana constitution because it had not funded the requested amount, using a funding formula it had approved in 1984 and again in 1985.

The Supreme Court of Louisiana reversed the trial court ruling that had granted plaintiff summary judgment and ordered the legislature to fund the requested amount.[18] The court made a distinction between a constitutional mandate to sufficiently fund a minimum foundation program and a funding formula that the plaintiff claimed set the level of funding. The court held that the "legislature is not required to fund the 'minimum foundation program' in accordance with a formula; the formula is a method for distribution of funds."[19]

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16. W. Va. Code § 18A-4-5 (1985).
17. State *ex rel.* Board of Educ. for County of Grant v. Manchin, 366 S.E.2d 743, 749 (W. Va. 1988).
18. Louisiana Ass'n of Educators v. Edwards, 521 So. 2d 390 (La. 1988).
19. *Id.* at 394.

The Supreme Court of Arizona ruled unconstitutional a section of its Enabling Act (Act) which permitted the leasing of nonhydrocarbon minerals on school trust lands at a flat rate royalty.[20] The defendants, Arizona and mining operators, argued the Act and its subsequent amendments by the United States Congress gave Arizona full authority to set the terms of twenty year mineral leases, including the establishment of royalty rates.[21] Therefore, the Arizona statute which allowed leases at a flat rate royalty of 5% of the net values of the minerals produced from the claim was a legitimate exercise of legislative power, even if the rate resulted in some leases being less than the true value of the royalty interest.

The court first considered what had been Congress' intent in the Act of 1910 and the 1927, 1936, and 1951 amendments. After a comprehensive discussion on the history of the Act and pertinent wording, the court stated "the congressional intent to be derived from the record as a whole [does not permit] us to conclude the procedure *explicitly* authorized only for the lease of oil, gas, and hydrocarbon deposits is also to apply to other types of mineral deposits."[22]

The court next turned to whether the fixed rate royalty provision of the Arizona statute provided maximum revenue for school bonds consistent with the imposed trust principles required by the Act. The defendants had argued that the fixed rate would result in more trust income because it would encourage mineral exploration and development that would be discouraged by the more costly appraisal and true value scheme advocated by the plaintiff. The court rejected the argument because Arizona had one of the lowest royalty rates, and data showed exploration and development are affected more by market forces than royalty rates. These facts were sufficient for the court to rule that the effect of the statute violated the trust duty concept required by the Act.

A California appellate court ruled in favor of a school district regarding its statutory right to have a judicial hearing on the California Board of Control denial of reimbursement for financial costs incurred when complying with the California Occupational Safety and Health Administration Act.[23] The case was remanded to determine whether reimbursable costs have been mandated under the law.

The Supreme Court of Michigan considered whether the State Board of Education can require a local board to have 180 days of instruction in a school year.[24] The state board had appealed a denial for a

20. Kadish v. Arizona State Land Dep't, 747 P.2d 1183 (Ariz. 1987).
21. *Id.* at 1189.
22. *Id.* at 1192 (emphasis in original).
23. Los Angeles Unified School Dist. v. California, 245 Cal. Rptr. 140 (Ct. App. 1988).
24. State Bd. of Educ. v. Houghton Lake Community Schools, 425 N.W.2d 80 (Mich. 1988).

writ of mandamus to compel a local board to rescind its decision not to make up six snow days. The local board argued that the statutes on which the mandamus was requested did not mandate the 180 days, but was only a condition to receive state aid. After an extensive review of the statute's legislative history and case precedent, the court ruled that the local boards have discretion to determine the number of instructional days. If the local boards decide to operate less than 180 days, however, they will receive no state aid. In another case dealing with 180 days of instruction to receive state aid, the Court of Appeals of Michigan denied four days of aid to a local school district because it had employed uncertified teachers on those days when the certified teachers were out on strike.[25] The court said the statutory language mandating the penalty was clear in prohibiting the employment of uncertified teachers.

The Supreme Court of Alabama affirmed a lower court ruling that the 1987 general appropriation act was unconstitutional insofar as it contained funds appropriated from the Alabama Special Education Trust Fund (ASETF).[26] The misappropriated funds had been allocated to state agencies other than public schools for "ordinary expenses" they incur for "educational purposes." The specific issue considered by the court was whether appropriations to state agencies could be made from the ASETF in a general appropriations bill. The court first reviewed in detail the history and court precedents regarding the purpose of the ASETF and two constitutional provisions regarding appropriation bills.[27] Based on the review, the court stated that to allow appropriations from ASETF in a general appropriation bill would be to impose a test in addition to those imposed by section 71 (i.e., is it for educational purposes?).[28] This additional requirement would violate both the spirit and letter of sections 71 and 45. The court's main concern over a lack of criteria to determine a state agency's request for ordinary expenses for educational purposes was explained by an example. A highway is constructed by the Highway Department, claiming it as an ordinary expense as well as an educational expense because the highway benefited the transportation of children to school.

A Florida Court of Appeals ruled in favor of the methodology used by the department of revenue (DOR) in determining a county's estimated level of assessment.[29] The plaintiff alleged that a Florida statute required the DOR to use a quantitative method rather than a qualitative

25. Grand Rapids Educ. Ass'n v. Grand Rapids Bd. of Educ., 428 N.W.2d 731 (Mich. Ct. App. 1988).
26. Childree v. Hubert, 524 So. 2d 336 (Ala. 1988).
27. Ala. Const. art. IV, §§ 45, 71.
28. Childree v. Hubert, 524 So. 2d 336, 341 (Ala. 1988).
29. Jones v. Department of Revenue, 523 So. 2d 1211 (Fla. Dist. Ct. App. 1988).

one. A DOR economist had projected the assessment level to determine state school aid using an estimated growth rate that necessitated the economist to determine what data to include and what weight to ascribe to the data. The court ruled on the trial testimony of a tax expert, who observed that the method was widely accepted, that the economist had used the best available data in a systematic way, and that the statutory requirement of the use of the best available and professionally accepted methodology had been met.

The Eighth Circuit held that the state of Missouri had to reimburse two school districts for capital costs incurred pursuant to a desegregation settlement plan.[30] The settlement plan requires the interdistrict transfer of black students from the St. Louis school system to surrounding school districts. Two of the districts submitted costs as a result of their increased enrollment. One district had to reopen an elementary school and the other had to build more classrooms. After an extensive discussion regarding the phrase "one-time extraordinary costs" found in the settlement agreement, the court ruled the phrase "means those costs which are due, not to ordinary operation of a school district for its resident students, but are due to the presence of transfer students from outside the school district."[31] The court disallowed, however, requested reimbursement for books and instructional material as "one-time extraordinary costs" because the districts had received per-pupil state aid.

Local Funds for Education

There was one state court case on the reduction of school funds by a township's governing board and two state court cases on local teacher salary supplements. A New Jersey appellate court ruled that a township's governing board had filed a timely statement of reasons for its $183,300 reduction of funds from a school district's proposed budget.[32] The governing board had appealed the State Commissioner of Education's decision that the funds be restored because the stated reasons for the reduction were not filed with the certification of the school budget reduction to the County Board of Taxation. The court ruled the township's board had filed its reasons in a timely manner when it submitted the reasons in the answer to the school board's petition to the commissioner. The court reasoned that the reasons were available to the commissioner to make an informed decision as required by law.

A local school board in Alabama was found to have violated a state

30. Liddell v. Board of Educ., St. Louis, Mo., 839 F.2d 400 (8th Cir. 1988).
31. *Id.* at 406.
32. Board of Educ. of Township of Deptford v. Mayor and Council of Township of Deptford, 541 A.2d 1080 (N.J. Super. Ct. App. 1988).

statute when it unilaterally adopted a new teachers' salary schedule that eliminated the steps and increments previously included in the schedule.[33] The board claimed it had statutory authority to "fix the salaries of all employees," and its action was not a policy decision. The Civil Court of Appeals ruled that since the board had written salary policies it had made a policy decision. Therefore, the board should have obtained the local superintendent's written recommendation and consulted with the local educational agency as mandated by another statute.

The West Virginia Supreme Court of Appeals affirmed a lower court's ruling granting a declaratory judgment for a school district.[34] The local education association had sued, seeking reinstatement of a county salary supplement after the defeat of special excess levy referendums that contained the supplement funds. The association claimed that the school district had violated two statutes that required the priorization of budget cuts. The court ruled that one of the statutes, setting minimal teacher salaries, expressly stated that a local board could discontinue salary supplements funded by local excess levies when forced to do so by a levy's defeat. The court found that the second statute, indicating the priority guidelines, applied to budget cuts that reduced teacher employment, a condition not present in the cuts regarding salary supplements.

Federal Funds for Education

There were four federal appellate court decisions regarding the impermissible use of federal education funds. The Secretary of Education's interpretation was found reasonable by the First Circuit Court of Appeals in disallowing the Massachusetts Department of Education's reallocation of unexpended Education of the Handicapped Act (Act) funds.[35] The case facts were very specific because they concerned dates. Three local school districts had returned funds to the state on September 26, 1980 from their 1979 fiscal year allocations under the Act. The state did not issue warrants reallocating the funds to the three districts until October 28, 1980 and November 19, 1980. The reallocation of carryover funds is permissible for allowable expenses to special education programs. The secretary argued that since the funds were not reallocated prior to September 30, 1980, the end of the fiscal year, they were to be returned to the federal government. The state argued that because the districts had obligated and expended their own funds to allowable special education programs not funded in the 1979 fiscal year, the state

33. Baker v. Oneonta City Bd. of Educ., 519 So. 2d 1350 (Ala. Civ. App. 1988).

34. Summers County Educ. Ass'n v. Summers County Bd. of Educ., 365 S.E. 2d 387 (W. Va. 1988).

35. Massachusetts, Dep't of Educ. v. United States Dep't of Educ., 837 F.2d 536 (1st Cir. 1988).

had met the September 30, 1980 deadline. The subsequent issuing of warrants in October and November of 1980 indicating the reallocation were no more than bookkeeping transactions.

The court, after reviewing various sections of the Act regarding the disbursement and reallocation of federal funds by a state agency, said they must be read in conjunction with the Tydings Amendment to the General Education Provisions Act.[36] While the Tydings Amendment extended the time frame to obligate federal funds, it did not extend the obligation and expended period past the next fiscal year beginning on the first of October. The state had not obligated and expended the federal funds by using warrants after September 30, 1980, therefore the secretary's interpretation was reasonable.

In a per curiam decision, the Ninth Circuit Court of Appeals reversed a lower court's ruling denying prejudgment interest on title I funds misspent by California.[37] The Secretary of Education had argued the *West Virginia v. United States* decision allowed prejudgment interest unless "state policy compels any deviation" from the general ruling that allows interest on debts due the United States.[38] The court said prejudgment interest should be allowed because it "will fully compensate the United States" and that the purpose of title I will be achieved by "ensuring the moneys appropriated . . . are devoted to service of the intended beneficiaries—disadvantaged children—rather than to the relief of California taxpayers."[39] The court also rejected the state's argument that *Pennhurst State School and Hospital v. Halderman* bars recovery of prejudgment interest because Congress did not clearly provide for such interest on misapplied title I funds.[40] The court said *Pennhurst* had been made inapplicable by the *Bell v. New Jersey* decision.[41]

The Ninth Circuit Court of Appeals, in another per curiam decision, upheld the Secretary of Education's order that California refund $410,872 for misspent title I funds.[42] The funds had been spent to conduct programs by a local school district under the Migrant Education Program. One program was a Counselor Training Program (CTP) that was a two-year graduate program with a state university to provide training to the district staff and other students in migrant student counseling. The students were required to spend 20% of their time counseling students. Another program was providing a flat fee of $50 per month for travel to student aides recruited from surrounding colleges. An audit by the Office of Inspector

36. 20 U.S.C. § 1225 (b)(1) (1982).
37. Riles v. Bennett, 831 F.2d 875 (9th Cir. 1987).
38. 07 S. Ct. 702 (1987).
39. Riles v. Bennett, 831 F.2d 875, 877 (9th Cir. 1987).
40. 451 U.S. 1 (1981).
41. 461 U.S. 773 (1983).
42. California Dep't of Educ. v. Bennett, 843 F.2d 333 (9th Cir. 1988).

General showed deficiencies in the documentation to support the CTP expenses because there was no identifying information on specific CTP participants and no evidence that their work had been done with migrant students. The secretary ruled that the funds spent on the CTP for 1980-81 and 1981-82 should be refunded because of the documentation errors and ordered a refund of the travel funds for the aides because they were spent in violation of federal regulations.

The court agreed that the secretary's ruling was reasonable. The evidence submitted by California on the CTP expenses "contained opinions and conclusions" about the counselors' involvement and the documentation contained no corroborating "evidence demonstrating that the counseling services were actually provided or supervised by LEA personnel."[43] The court also disallowed the travel costs, reasoning that the stipulated charges should be the same with those allowed in nonfederally sponsored activities. The flat fee method was not consistent with the local district's policy of reimbursing travel on a per-mile basis with supporting documentation of time, location, and distance.

The Secretary of Education's disallowance of $699,450 in title I expenditures by a California school district was the subject of another Ninth Circuit decision.[44] The three types of expenditure at issue were: (1) food and lodging for parent and staff-training conferences; (2) costs for attendance at multi-purpose education conferences; and (3) student field trip costs.

The secretary disallowed the food and lodging expenses for seven district sponsored conferences at hotels because they could have been held in district facilities. Also disallowed were food and lodging costs for two state-sponsored conferences held in Anaheim because they were within reasonable commuting distance. California made three arguments in defense of the costs. The first argument was that there were noneconomic benefits in holding the seven conferences in hotels (e.g., larger attendance). The court rejected the argument because California had presented no evidence to support the alleged participation benefit. The second argument was that since Los Angeles is so large it was not reasonable to require participants to commute each day. Again, California failed to show the participants for the seven district conferences had traveled more than twenty-five miles—a distance the state claimed was reasonable. In regard to the two state-sponsored conferences in Anaheim, the court remanded the secretary's disallowance to the Education Appeal Board to determine how many participants traveled more than twenty-five miles. The third argument made by California was that if the district sponsored conferences

43. *Id.* at 338.
44. California Dep't of Educ. v. Bennett, 849 F.2d 1227 (9th Cir. 1988).

had been held in its own facilities, there would have been charges for fair rental costs, labor and food costs, and travel expenses for some participants. These costs should have been credited against the disallowed expenses. The court agreed and remanded, with instructions that the state present evidence for the costs, other than the rental expense.

The court next considered the denial of expenditures for twenty-three conferences attended by program participants because the secretary regarded them to be general in purpose rather than title I specific. The state had presented no evidence, as required by federal regulations, to show that the main purpose of the conference was to share information relating to the grant program and that the training afforded was directly "related to the [t]itle I services to be provided during the school year."[45] This failure to provide the evidence was sufficient for the court to hold that the secretary's decision was reasonable.

The court reversed the secretary's disallowance of student field trip expenditures. The reason was that the secretary had not shown good cause. The disallowance had been premised on audit procedures that did not give the state sufficient information to refute specific expenditures.

School Fees

The United States Supreme Court decided on the constitutionality of charges for school transportation and two state court cases dealt with reimbursement procedures for book fee assistance. The Supreme Court ruled in *Kadrmas v. Dickinson Public Schools* that a North Dakota statute did not violate the equal protection clause because it allowed some school districts, and not others, to assess a fee for transporting students between home and school.[46] The statute allows nonreorganized school districts to charge a fee for student bus service, not to exceed estimated costs. The plaintiff initially sued the school district, a nonreorganized district, in state court seeking to enjoin the district from collecting any bus fee. The Supreme Court of North Dakota ruled that the statute did not violate the equal protection clause of the fourteenth amendment because it was "purely economic legislation," hence "must be upheld unless it is patently arbitrary and fails to bear any rational relationship to any legitimate government purpose."[47]

Justice O'Connor, who wrote the majority opinion, rejected the plaintiff's argument that the Court should apply the "heightened" (substantial relationship) scrutiny test to determine the constitutionality of the statute. The plaintiff had contended that the required bus fee unconstitutionally

45. 34 C.F.R. § 200.75 (1981).
46. 108 S. Ct. 2481 (1988).
47. Kadrmas v. Dickinson Pub. Schools, 402 N.W.2d 897, 902 (N.D. 1987).

deprived access to education to those who were too poor to pay. The Court first disagreed with the plaintiff's reliance on *Plyler v. Doe* as requiring the heightened scrutiny test.[48] Unlike the children in *Plyler*, the plaintiff in the present case had "not been penalized by the government for illegal conduct by her parents."[49] The plaintiff was denied bus service because her parents only refused to pay the same fee charged other families that used the service. The Court next rejected the plaintiff's argument that the Court's decisions in *Griffin v. Illinois*[50] and *Brodderick v. Connecticut*[51] required heightened scrutiny because the government cannot withhold important services from those who are unable to pay for them. The reason that these cases were distinguishable was because the plaintiff in this case was not faced with a situation where the statute created a legal monopoly to the state for transporting students to school. In fact, the plaintiff's parents had used alternative means to get her to school. The Court, using the rational relationship test, concluded the user fee for the bus service was constitutional, and found it difficult "to imagine" why the district should have a constitutional obligation to offer it for free when it was not required to do so.

An Indiana Court of Appeals ruled in favor of a township trustee for refusing to reimburse a school district for student fee assistance.[52] The Indiana Code provides that parents who meet certain financial criteria are not required to pay for school books, supplies, and required class fees. The school district sued, claiming the trustee did not possess authority under the code to deny reimbursement for those parents who failed to appear in the trustee's office within a certain number of days from date of notification. While the trustee had authority to determine eligibility, the district argued that the parents' failure to appear did not establish their ineligibility. The court stated that under the law the trustee was the "Overseer of the Poor" and had the authority to establish procedures applicants must follow to qualify for assistance.

The same Indiana appellate court later ruled, however, that another township trustee violated the state code by requiring parents to sign voucher fees before reimbursing the school district.[53] The trustee had refused to reimburse $35,279 because parents of students who were eligible for assistance had failed to sign the voucher. The court rejected the trustee's argument for the self-imposed voucher requirement because it

48. 457 U.S. 202 (1982).
49. Kadrmas v. Dickinson Pub. Schools, 108 S. Ct. 2481, 2488 (1988).
50. 351 U.S. 12 (1956).
51. 401 U.S. 371 (1971).
52. South Bend Community School Corp. v. Portage Township of St. Joseph County, 520 N.E.2d 446 (Ind. Ct. App. 1988).
53. Schrader v. Mississinewa Community School Corp., 521 N.E.2d 949 (Ind. Ct. App. 1988).

would reduce fraud by the parents and assure that they received the assistance.

School Activity Funds

The state of West Virginia sought to compel the West Virginia Secondary School Activities Commission, a voluntary association, to transfer all existing funds and future deposits into a state account within twenty-four hours of receipt of funds.[54] The Supreme Court of Appeals denied the writ, holding that the moneys controlled by the commission were quasi-public funds, not moneys due the state.

SCHOOL TAX ISSUES

Cases pertaining to school taxes concerned legislation and administrative actions related to student tuition, tax caps, tax assessment and collection practices, the constitutionality of tax and bond elections, the disbursement of tax revenues, capital and civil bonds, and delinquent school taxes. The United States Supreme Court rendered a decision which may influence school bond elections.

Tuition

In Nebraska, statutes provide that taxpayers who reside in school districts without a high school send their children to districts with such a school. Tuition for these students is paid from tax funds generated by a nonresident school tuition levy on property located in the nonschool district. This provision attempts to satisfy the constitutional duty of furnishing free instruction in the common schools for all persons between the ages of five and twenty-one.[55]

Taxpayers in a nonresident high school district challenged the constitutionality of the tuition charged. They asserted that the statute was an unlawful delegation of legislative authority to the State Department of Education; that it was unconstitutional in that nonresident tuition charges could exceed the actual cost of educating nonresident high school students; and, that the nonresident tuition levy constituted taxation without representation. The trial court found merit in the arguments and declared the entire statute unconstitutional and void given the absence of adequate standards pertaining to the exercise of discretion by school boards in applying the power delegated by the legislature. An appeal was filed alleging that the trial court erred in its findings and in its decision to grant

54. West Virginia *ex rel.* Manchin v. West Virginia Secondary School Activities Comm'n, 364 S.E.2d 25 (W. Va. 1987).

55. Neb. Const. art. VII, § 1.

an injunction, and that the plaintiffs could suffer no harm by reducing the amount of nonresident tuition.

The Supreme Court of Nebraska agreed that part of the statute, as amended in 1984, was unconstitutional.[56] The statute did not set out reasonable limitations and standards to govern the receiving school district's determination of the tuition charge. However, the court held that the entire statute was not unconstitutional inasmuch as the invalid portions could be separated from the valid portions, enforced independently, and without doing violence to the intent of the legislature. Furthermore, the court held that the legislature did not unlawfully delegate authority and that the departure from a per pupil tuition cost was not unconstitutional so long as there was a reasonable and approximate estimate made on reasonably ascertainable facts and anticipated conditions.

Tax Assessment and Collection

Cases concerning assessment dealt with tax caps, tax equalization, and tax assessment and collection procedures. Two cases concerned attempts to invalidate a school district's tax levy.

In Georgia, taxpayers sought to enjoin a Board of Education from levying ad valorem taxes on real property which exceeded the tax cap in the state constitution. The Supreme Court of Georgia denied relief on the grounds that the excess levy resulted from obligations arising from the Quality Basic Education Act and the levy was within the exception to the tax cap allowed by the same act.[57] In New York, taxpayers attempted to invalidate a school tax levy on the basis of discrimination between owners of similar properties in different assessing units within a school district. An appellate court held the different proportions of property taxes constitutional.[58]

An amendment to the Arkansas Constitution provides that tax assessments and millage rates for personal and real property be equalized after reappraisal.[59] Wynne School District No. 9 voted an increase of three mills, which the collector of Cross County applied equally to real and personal property. Union Pacific Railroad Company filed suit to block the application of the new millage to personal property. The Arkansas Supreme Court found for the plaintiff, stating that the new millage could not be collected against personal property until the rates equalize.[60]

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56. Ewing v. Scotts Bluff County Bd. of Equalization, 420 N.W.2d 685 (Neb. 1988).
57. Hicks v. Arnall, 368 S.E.2d 733 (Ga. 1988).
58. Forward v. Webster Cent. School Dist., 526 N.Y.S.2d 870 (N.Y. App. Div. 1988).
59. Ark. Const. of 1874 art 16, § 14a (1982).
60. Clark v. Union Pacific R.R. Co., 745 S.W.2d 600 (Ark. 1988).

The Court of Common Pleas, Washington County, was within its right to reduce a tax assessment on coal property located in two school districts.[61] The court may determine the qualifications of expert witnesses and act as a fact finder to arrive at fair market values for property.

The Supreme Court of Ohio held that school districts cannot appeal the tax commissioner's public utility assessments on the basis of not having received notice of the valuation and apportionment of utility taxes.[62] Furthermore, such denial does not deny a district's right to due course of law as political subdivisions have no equal protection or due process rights vis-a-vis the state which created them.

The Quitman School District in Arkansas sued two county surety companies and two county clerks for failing to extend real estate taxes properly, thereby causing the loss of school revenue. A jury found the defendants negligent and responsible for 90% of the revenue losses to the school district. The trial court entered judgment against the defendants which the Supreme Court of Arkansas affirmed.[63]

Taxpayers in Ohio and Mississippi sought refunds of taxes improperly collected. Both the Supreme Court of Ohio[64] and the Supreme Court of Mississippi[65] essentially held that taxpayers could not recoup taxes erroneously paid when they did not comply with protest and notice requirements.

The Court of Appeals of Kentucky ruled that tax collectors are allowed a commission for expenses not less than 1% nor more than 4% of the school taxes collected.[66] However, tax collectors may not deduct their fees from the tax funds before paying the district boards of education.

Tax Exemptions

The Supreme Court of Florida held that the Palm Beach School Board was statutorily exempt from paying certain fees for connecting a school to the wastewater system of an environmental control district.[67] This finding prevailed even though the title of the legislation providing the exemption did not contain "utility."

Agricultural land in New York is exempt from property and school

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61. Ciaffoni v. Washington County Bd. for Assessment of Appeals, 535 A 2d 247 (Pa. Commw. Ct. 1987).

62. Avon Lake City School Dist. v. Limbach, 518 N.E. 2d 1190 (Ohio 1988).

63. American Casualty Co. of Reading v. Quitman School Dist., 739 S.W. 2d 144 (Ark. 1987).

64. Blisswood Village Homeowners Ass'n v. McCormack, 526 N.E. 2d 69 (Ohio 1988).

65. Morco Indus. v. City of Long Beach, 530 So. 2d 141 (Miss. 1988).

66. Benson v. Board of Educ. of Bellevue, 748 S.W. 2d 156 (Ky. Ct. App. 1988).

67. Loxahatchee River Envtl. Control Dist. v. School Bd. of Palm Beach County, 515 So. 2d 217 (Fla. 1987).

taxes.[68] However, when land previously exempt is not used for agricultural purposes as a result of a town's determination not to repair an access road, it is no longer subject to agricultural exemptions.

Use of School Tax Base Revenues

Cases concerning the use of school revenues pertained to lease purchase agreements, budget issues, and salaries. The Supreme Court of South Carolina held that lease purchase agreements entered into by a school district were not subject to limitations of the state constitution.[69] Lexington County School District enrollment expanded rapidly necessitating new construction and substantial renovation. However, bond referenda failed three times and the Board of Trustees pursued lease purchase agreements in order to provide facilities to accommodate students. Though the trial court held the lease purchase agreements unconstitutional, the Supreme Court reversed, stating that the lease purchase agreements were not general obligation debts requiring the governmental entity to impose property taxes for payment.

The Wilkes-Barre Area Vocational School in Pennsylvania is supported by five school districts which must approve the operating budget. Statutes provide that the budget must be approved by two-thirds of the participating districts. The 1986-87 budget was approved by only three districts. One of the districts which did not approve the budget sought a declaratory judgment. The trial court held that four out of five of the participating districts had to approve the budget. On appeal, a Commonwealth court held that two-thirds of the participating districts, or the next higher numerically possible fraction if the number of participating districts makes a two-thirds vote impossible, was an appropriate interpretation.[70]

A school district in Arizona lost an override election seeking approval for a 10% increase in the aggregate budget limitation. The governing board wanted to hold another election and the superintendent declined on the basis of advice from the county attorney that the proposed second election was illegal. The trial court denied the district's request to compel the superintendent to hold another override election. The Court of Appeals ruled that the second election would be illegal and that the district cannot compel the superintendent to perform an illegal act, even if the act is ministerial.[71]

Taxpayers in Oregon argued that an educational service district pre-

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68. Van Nostrand v. Board of Assessors, 526 N.Y.S.2d 664 (App. Div. 1988).
69. Caddell v. Lexington County School Dist., 373 S.E.2d 598 (S.C. 1988).
70. Wilkes-Barre Area Vocational School v. Greater Nanticoke Area School Dist., 539 A.2d 902 (Pa. Commw. Ct. 1988).
71. Wilson Elementary School Dist. No. 7 v. Superior Court, 762 P.2d 626 (Ariz. Ct. App. 1988).

pared a budget which was not in compliance with the local budget law. The specific charges were that the composition of the budget committee was unconstitutional, that they did not show "substantial compliance" with the local budget law, that an addendum to the budget message was false and deceptive, and that the contingency fund line item was unreasonable and not based on past experience. The Tax Court ruled that it did not have authority over constitutional challenges, that the district did substantially comply with the budget law, and that the addendum was not false and deceptive. The Supreme Court of Oregon agreed and affirmed, noting that "substantial compliance" entails an effort to comply fully with the statutes and that failure to comply amount only to a minor error or irregularity.[72]

Two cases pertained to salary. The Supreme Court of Appeals of West Virginia held that nonteaching employees could not recover salary supplements based on a new scale which was in excess of the state minimum. The court held that voter approval of a special levy which does not require each employee to receive the supplemental salary allows the board to exercise discretionary judgment in such allocations on an annual basis.[73]

Teachers in the Lumberton Independent School District of Texas sued to block the district from implementing a tax rate which would not finance the salary schedule from the previous year. Following state cut-backs, Lumberton chose to reduce expenditures by reducing local supplements. Teachers argued they had a contractual right to the salary of the previous year. A Court of Appeals held that neither the statutes nor the contract used by the district created an implied or *de facto* agreement to continue the salary supplements which exceeded the mandated state minimum salaries.[74]

Tax Elections

Taxpayers in Illinois alleged that a school district attempted to circumvent tax limits imposed by the legislature by abolishing its working cash fund, transferring remaining funds into the educational fund, and then authorizing issuance of working class fund bonds within the limits established by statute. The taxpayers argued that these actions effectively supplemented the educational fund. An appellate court denied the taxpayers' objections.[75]

In Delaware taxpayers sought to have a special election for an

72. Gugler v. Baker County Educ. Serv. Dist., 754 P.2d 891 (Or. 1988). *See, e.g.*, Gugler v. Baker County Educ. Serv. Dist., 754 P.2d 900 (Or. 1988) and Gugler v. Baker County Educ. Serv. Dist., 754 P.2d 903 (Or. 1988).

73. Bane v. Board of Educ. of County of Monongalia, 364 S.E.2d 540 (W. Va. 1987).

74. Allen v. Lumberton Indep. School Dist., 746 S.W.2d 524 (Tex. Ct. App. 1988).

75. Application of Walgenbach, 520 N.E.2d 78 (Ill. App. Ct. 1988).

additional tax levy declared void. They charged that election officials improperly invalidated sixty ballots, thus ensuring the passage of the additional tax. After reviewing the facts and considering multiple criteria for voiding ballots, a Superior Court determined that the case had no legal merit.[76]

DeSoto Parrish School Board in Louisiana was sued by a group of business and property owners who opposed an election to authorize an ad valorem property tax and the issuance of bonds in four school districts for school construction. The property tax election was passed parrishwide, but the bond issue was passed in only two of the four districts. Opponents sought the invalidation of both.

A Louisiana Court of Appeals upheld the validity of the property tax election, noting that the courts do not entertain election contests unless shown that the matters complained of would have altered the election results.[77] The bond election was challenged as unconstitutional since all districts in the state had a bond indebtedness cap of 25% of assessed valuation with the exception that several special school districts had the authority to incur indebtedness at a 35% rate. The court held that this was unconstitutional in that the citizens in these special parrishes had been made "less equal" than other citizens in the state. The court declined to invalidate the election but did preclude the sale of any bonds exceeding the 25% debt limit.

Tax Revenue Disbursement

In Kansas, personal property taxes were assigned to the wrong school district as a result of a clerical error. The Supreme Court ruled that county commissioners have the power and duty to reassign current and recent prior year tax revenues to the proper district.[78]

When prior, rather than current year, assessed valuations are used to determine a portion of a school district's revenue, a deficiency tax may be added to the school district's next year levy. In Illinois this does not require notice of the extended tax deficiency to the taxpayers.[79]

Anderson County School District 1 applied for capital improvement funds for school construction in South Carolina. The application was approved by the State Board of Education and funds were transferred to the county treasurer. When the district sought disbursal of the funds to pay expenses incurred, the county board of education refused to counter-

76. Spencer v. Smyrna Bd. of Educ., 547 A.2d 614 (Del. Super. Ct. 1988).

77. Concerned Business and Property Owners of DeSoto, Inc., v. DeSoto Parrish School Bd., 528 So. 2d 567 (La. Ct. App. 1988).

78. Application of Unified School Dist. No. 437, 757 P.2d 314 (Kan. 1988).

79. Application of County Collector of McHenry County, 518 N.E.2d 1250 (Ill. App. Ct. 1988).

sign the warrants and the treasurer did not disburse the funds. The district sought a writ of mandamus which was denied by the trial court. The South Carolina Court of Appeals reversed and remanded stating that the county board of education did not have discretionary authority to disapprove the disbursal of the funds.[80]

In Oregon, the legislature passed a statute limiting the liability of counties for interest earned on tax moneys and unsegregated tax collection accounts to any taxing district within a specified period of time. Prior to, and in anticipation of this legislation, Jackson County and nine school districts signed settlement agreements which stipulated that the districts would repay county money pending the passage and validation of the legislative statute. When the legislation was passed, Jackson County sought declaratory judgment for money paid to the districts in excess of the amount prescribed by the time limits set in the statute. The trial court found for the county and the school districts appealed, arguing that the trial court did not have proper jurisdiction to consider the validity of the legislation. They also alleged that the county committed fraud and evidenced breach of the contractual covenant of good faith. The Oregon Court of Appeals affirmed the trial court's decision.[81]

Ohio statutes provide for a ten mill limitation on taxes levied on any taxable property in a subdivision. Strongsville City School District, which had received 5.1 mills of the unvoted county millage since 1942, discovered it was due 5.6 mills and applied for the higher rate with the County Budget Commission. However, the budget was approved for only 5.1 mills. On appeal to the Board of Tax Appeals, the district's millage was increased to 5.6 mills for 1987. Subsequently, the millage in Columbia Township, where some of Strongsville District is located, was reduced from 3.3 to 2.8 mills. The two actions had the effect of increasing revenue to Strongsville by $696 while reducing revenue to Columbia by $31,420. The County Budget Commission and Township appealed, alleging that Columbia Township's millage could not be reduced since it had not requested a lower rate, that laches limited the Strongsville school board to the 5.1 mill rate accepted for forty-five years previously, and that the Columbia Township was guaranteed the minimum levy within the ten mill limit unless it requested a lower rate. The Supreme Court of Ohio affirmed the decisions made by the Board of Tax Appeals.[82] It noted that laches did not apply since Strongsville did not request a refund of past, reduced levies and that though the result of these decisions was harsh for

80. Anderson County School Dist. 1 v. Anderson County Bd. of Educ., 371 S.E.2d 807 (S.C. Ct. App. 1988).

81. Jackson County v. Jackson Educ. Serv. Dist., 752 P.2d 1224 (Or. Ct. App. 1988).

82. Board of Educ. of Strongville v. Lorain County Budget Comm'n, 526 N.E.2d 297 (Ohio 1988).

Columbia, it was not inequitable or unjust. Additionally, the court observed that Columbia had received a windfall since 1942 which was to the detriment of Strongsville.

Bond Issuance

The United States Supreme Court in *South Carolina v. Baker*, a case of original jurisdiction, ruled a federal tax statute did not violate the tenth amendment and state bond interest is not immune from federal tax.[83] The statute is the Tax Equity and Fiscal Responsibility Act of 1982 and, in particular, section 310 (b)(1) that removes the federal income tax exemption for interest earned on publicly offered long-term bonds issued by state and local governments unless the bonds are issued in registered form.[84] The congressional purpose for including the requirement of registered bonds was to reduce tax evasion concerns associated with bearer bonds.

Justice Brennan, who wrote the seven-to-one opinion, first considered South Carolina's argument that section 310 (b)(1) violated the tenth amendment because it regulates the state by prohibiting issuance of bearer bonds. The Court rejected the argument noting that *Garcia v. San Antonio Metropolitan Transit Authority*[85] set the limits on congressional authority to regulate activities (i.e., "that states must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity").[86] South Carolina failed to meet the *Garcia* standard, for it never alleged it was excluded from the national political process or in any way singled out.

South Carolina's second argument that section 310 (b)(1) "unconstitutionally violates the doctrine of intergovernmental tax immunity because it imposes a tax on the interest earned on a state bond" also was rejected.[87] In an extensive review of case law, the Court said the *Pollock v. Farmers' Loan and Trust* decision,[88] which had held any interest earned on a state bond was immune from federal taxation, had been overruled by subsequent decisions. Therefore, the Court concluded that there is "no constitutional reason for treating persons who receive interest on government bonds differently than persons who receive income from other types of contracts with the government."[89] The conclusion is that the tax collected is not collected from the state, but from the bondholder.

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83. 108 S. Ct. 1355, *reh'g denied*, 108 S. Ct. 2837 (1988).
84. 26 U.S.C. § 103 (j)(1) (1982).
85. 469 U.S. 528 (1985).
86. South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988).
87. *Id.* at 1362.
88. 157 U.S. 429 (1985).
89. South Carolina v. Baker, 108 S. Ct. 1355, 1367 (1988).

A Montana statute provides that bond issues have failed if less than 30% of registered voters listed cast votes. When the board of trustees disqualified 296 persons listed, those voting in a bond issue to renovate a high school building then constituted 30% of the registered voters. A writ of prohibition was granted by the Supreme Court of Montana.[90]

In California, the Morgan Hill Unified School District attempted to validate and sell bonds for capital improvements to a high school based on a ballot approving a surcharge for construction which was passed sixteen years earlier. The previous bond issue was passed for the purpose of constructing the high school which the board now desired to enlarge and improve. A California Court of Appeals held that the school district did not have the authority to amend the lease of and finance additions and improvements to the high school on the basis of the 1972 ballot.[91]

Under the North Carolina Constitution, the proceeds from forfeited civil bonds issued to secure one's presence in a custody dispute are payable to the county board of education.[92]

Delinquent School Taxes

Duvall County Vocational School District in San Antonio, Texas and others brought action against an estate executrix for delinquent taxes. The trial court entered judgment for the taxing agencies asserting that delinquent tax rolls were prima facie evidence of a proper levy whereupon the executrix appealed. A Texas Court of Appeals affirmed the decision.[93]

In Pennsylvania, the Fairfield Area School District enacted an amusement tax resolution in 1982 which provided for a tax of 5% on admissions to amusements doing business within the school district. Admissions included the sport of skiing, use of ski lifts and tows, rental of equipment, and purchase of ski lessons. In March 1984, a taxpayer who operated a ski resort in the district refused to pay the admissions taxes. The following October, the legislature amended enabling legislation to establish a 10% limit on admission taxes and a 40% limit on the cost of lift tickets and admissions to ski facilities. Fairfield District complained in November of 1985 to recover taxes owed by the operator of a ski resort. The taxpayer asserted that the tax resolution exceeded the taxing authority of the school district and that only fees for entering the ski area were subject to the tax resolution. The trial court determined the amount of the delinquent taxes on the basis of the old resolution and the new enactments and ordered the taxpayer to pay. A Commonwealth Court of Pennsylvania affirmed.[94]

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90. Bischoff v. High School Dist. No. 4 of Lincoln County, 749 P.2d 533 (Mont. 1988).
91. Morgan Hill Unified School Dist. v. Amoroso, 252 Cal. Rptr. 1 (Ct. App. 1988).
92. Mussallam v. Mussallam, 364 S.E.2d 364 (N.C. 1988).
93. Parr v. Texas, 743 S.W.2d 268 (Tex. Ct. App. 1987).
94. Ski Roundtop, Inc. v. Fairfield Area School Dist., 533 A.2d 828 (Pa. Commw. Ct. 1987).